

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

IN REPLY REFER TO:

3200

Mr. Phillip S. Hughes
Assistant Director for
Legislative Reference
Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Hughes:

This refers to your request of July 26 for the Commission's views with respect to the proposed comments of the Departments of State, Justice, and Defense on S. 920, a bill to amend sections 303 and 310 of the Communications Act of 1934, as amended, with respect to alien amateur radio operators.

The Commission's comments on S. 920 were adopted by the Commission on July 3 and submitted to the Bureau of the Budget shortly thereafter. Several clarifying telephone discussions were held by representatives of the Commission and your staff.

We find nothing in the comments of the Departments of State, Justice, and Defense which is inconsistent with the Commission's views on S. 920. The Department of Defense indicates that "the United States and its representatives have frequently been embarrassed because we have denied citizens of other countries the right to operate radios in this country and have, at the same time, sought to secure for our citizens amateur rights in foreign countries. The United States would appear in a more favorable light if we were to permit amateurs of other countries to operate radio stations here under the same safeguards that other governments apply to foreigners who operate amateur radios." The Commission in its comments notes that it has received only "a small number of sporadic inquiries from United States citizens desiring to use their amateur equipment in other countries and who cannot do so because the United States does not grant reciprocity" and that "we have no indication that the interest in the matter, or its merits, considering the problems involved, would warrant our active support of the measure" adding that we have no objection in principle should

Congress determine such legislation is in the public interest.

These positions are, therefore, not necessarily inconsistent--the Defense Department saying that because of information available to it--it supports the bill, and this Commission saying its files do not contain evidence of sufficient interest in the matter to warrant its active support of the bill--in view of the problems involved.

Defense suggests that the words "if it [FCC] finds that the public interest, convenience or necessity may be served" be deleted from the title because they do not appear in the text of the bill. The Department of Justice notes that the bill provides for issuance of authorizations by the Commission "under such conditions and terms as it may prescribe." It also notes that the opening sentence of section 303 provides "Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall * * *" and suggests clarification of the language of the bill to avoid any question as to the findings required to be made by the Commission.

To expand slightly upon the Commission's comments in this regard, it is our position that--even though we don't have information which warrants our active support of the bill, its enactment by the Congress would itself be a public interest determination of the desirability to permit such operations under the conditions the Congress may set forth. Because section 303 contains the public interest language, it would seem unnecessary to include similar language in either the title or text. The Commission under the public interest standard would, therefore, consider any information in its files which would bear on whether the requested operation by a particular person would serve the public interest. For example, assuming such a statute and bilateral agreements, it would be pertinent for the Commission to consider that someone requesting such authority had previously operated under such authority in violation of Commission rules. The language "under such conditions and terms as it [FCC] may prescribe" would simply provide us with additional flexibility in tailoring the operations in a particular case to provide for operation in the public interest.

Justice refers to its earlier comments on S. 2361, 87th Congress, and concludes that "in the light of the security considerations set forth in our report on S. 2361, it would seem that no authorization should be granted unless it is determined that the national security would not be endangered thereby." It also adds, in its S. 2361 comment that "aside from security considerations, which might remain substantially the same regardless of whether the bill is enacted, the subject of this legislation is not a matter for which the Department of Justice has primary responsibility and accordingly we make no

recommendation as to its enactment" -- the clear implication being that the Department of Justice does have primary responsibility in the security field.

Construing these two statements together, we would agree and have indicated in our comments that "the Department of Justice and other appropriate agency of Government, other than the Federal Communications Commission, should be given the statutory obligation to undertake whatever security measures are appropriate and to report its findings and recommendations to the Commission."

It thus appears that Justice and this Commission are both insistent that whatever legislation may be enacted have due regard for questions of national security. The Department of Defense also appears to endorse this view when it says such a bill if it provides "adequate safeguards for the national security" would be of net benefit to the United States.

Because staff discussions with representatives of your office have indicated even more explicit statement of the Commission's position in this regard would be welcome--let me summarize the Commission views on the security problem:

1. While reciprocal agreements--presumably entered into with the more friendly nations--might mitigate security problems, consideration of national security would remain in individual cases especially since we are here dealing with aliens rather than our own citizens.

2. Congress--if it enacts such legislation should assure itself that appropriate security measures will be undertaken by such agencies as it specifies.

3. The Commission has no expertise or staff to handle security investigations and security determinations should not be made by the FCC.

4. While the Commission would prefer simply to refer the names of those requesting such authority to an appropriate security agency and have that agency tell us whenever a request should be denied on security grounds, we are willing--should Congress so desire--to check with whatever security agencies Congress deems appropriate--and to receive information and/or recommendation from such agencies bearing on the security issue--which information would then be evaluated to the extent the Commission is able to do so--and a decision reached as to whether to grant or deny a request. The essentially ministerial function of the registration process we have suggested should be considered in this regard.

The Department of State's assumptions that it would negotiate the proposed bilateral agreements after appropriate coordination with other interested U.S. Government agencies accords with our view and the Commission is, of course, one of the interested agencies. The further assumption that the conditions and terms to be prescribed by the FCC would relate to technical operating details--also substantially accords with our view, but this Commission under such authority could also prescribe procedures and determine such matters as the geographic, technical, and time limits for such authority.

While this letter expands somewhat upon the security discussion in our comments, we deem the above to be fully consistent with the position taken therein and hope that this additional explanation will serve to clarify the matter.

This letter was adopted by the Commission July 30, 1963.

BY DIRECTION OF THE COMMISSION

E. William Henry
Chairman